

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RALPH DALE ARMSTRONG,

Plaintiff,

v.

JOHN I. NORSETTER, MARION G. MORGAN
and KAREN D. DAILY,

Defendants.

ORDER

12-cv-426-bbc

Plaintiff Ralph Dale Armstrong is suing John Norsetter, Marion Morgan and Karen Daily for destroying potentially exculpatory evidence in the context of a criminal prosecution against plaintiff. In an order dated July 29, 2016, dkt. #224, I denied these defendants' motions for summary judgment. (I dismissed the complaint as to a fourth defendant, Daniel Campbell.) Now defendant Morgan has filed an interlocutory appeal in which she argues that I erred in denying her qualified immunity defense. Accompanying the notice is a renewed motion to stay proceedings against her pending appeal. Dkt. #230. (I denied her first motion because she failed to support it. Dkt. #228.) In an order dated August 2, 2016, dkt. #232, I set a short briefing schedule on the motion and asked the other parties to address not only defendant Morgan's motion to stay, but also the question whether the claims against the other two defendants should be stayed if I grant Morgan's motion. All parties have had an opportunity to be heard on both issues.

This case was filed back in 2012, making it this court's longest pending case. And of course the facts of the case go back all the way to 1980, so it is understandable that plaintiff would be eager to resolve his claims at long last, at least at the district court level, particularly because the case already has gone through one unsuccessful interlocutory appeal.

Although I share plaintiff's concerns about further delays in this case, efficiency is not a ground for denying defendant Morgan's request for a stay. All parties agree that I cannot deny Morgan's request unless I find that her appeal is frivolous. I may have doubts about Morgan's chances of success, but I cannot say that she has no chance. Further, I agree with the other defendants that it makes no sense to continue with the other claims while the claim against Morgan is stayed. Because Morgan's claim is intertwined so closely with plaintiff's claim against defendant Daily, allowing the other claims to move forward essentially would require holding two similar trials. Accordingly, I am staying all proceedings in this case pending a decision from the court of appeals. In light of the length of time this case has been pending, I anticipate that the court will make the case a priority for a swift decision.

ORDER

IT IS ORDERED that defendant Marion Morgan's motion to stay, dkt. #230, is GRANTED, and plaintiff Ralph Armstrong's motion to certify the appeal as frivolous, dkt. #234, is DENIED. The September 12, 2016 trial is CANCELED and all remaining

deadlines are STRICKEN pending a decision from the Court of Appeals for the Seventh Circuit.

Entered this 5th day of August, 2016.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge